

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

Tommie Lewis Penson,

Civ. File No. 4:07-2014

Plaintiff,

v.

**MEMORANDUM AND ORDER**

Judge Donald J. Stohr, United States  
District Court for the Eastern District  
of Missouri, James E. Crow, United  
States Attorney for the Eastern District  
of Missouri, and the United States  
of America,

Defendants.

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This matter is before the Court on Plaintiff's Application to Proceed Without Prepayment of Fees on Appeal.

Pursuant to 28 U.S.C. § 1915, this Court may authorize a party to proceed without prepayment of fees, costs, or security, upon the affidavit of a party testifying that he is unable to pay such costs, describing the nature of the appeal and his belief that he is entitled to redress. According to this statute, which is part of the Prison Litigation Reform Act of 1995 ("PLRA"), prisoners who are granted in forma pauperis ("IFP") status are not excused from paying the court filing fee altogether, as is the case for non-prisoner IFP litigants. Instead, a prisoner who is granted IFP status is merely granted permission to pay the filing fee in installments, rather than paying the entire amount in advance. Ashley v. Dilworth, 147 F.3d 715, 716 (8th Cir. 1998) ("[t]he purpose of the [PLRA] was to require all prisoner-litigants to pay filing fees in full, with the only issue being whether the inmate pays the entire filing fee at the initiation of the proceeding or in installments over a period of time").

Section 1915(b)(1) requires prisoner IFP applicants to pay an initial partial filing fee at the outset of the case and § 1915(b)(2) requires that the remaining balance be paid in installments through regular deductions from the prisoner's trust account. The initial partial filing fee is 20% of the greater of the average monthly deposits to the prisoner's trust account or the average monthly balance in that account for the 6-month period preceding the notice of appeal. 28 U.S.C. § 1915(b)(1)(A)-(B).

In this instance the current balance of Plaintiff's trust account is 33¢ and the average monthly balance in that account is \$12.16. The PLRA provides that a prisoner-appellant must pay the initial partial appellate filing fee "when funds exist." *Id.* § 1915(b)(1). Because no funds exist, Plaintiff is excused from paying an initial partial appellate filing fee. He must, however, pay the entirety of the filing fee in monthly installments as set forth in § 1915(b)(2).

Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Application to Proceed Without Prepayment of Fees (Docket No. 10) is **GRANTED**; and
2. Plaintiff is excused from paying an initial partial appellate filing fee.

Dated: March 1, 2010

*s/Paul A. Magnuson*  
Paul A. Magnuson  
United States District Court Judge